Safety of Rwanda (Asylum and Immigration) Bill

Joint Briefing for Second Reading in the House of Lords

26 January 2024

In no uncertain terms, we reiterate our opposition to this Bill in its entirety. The Government seeks to legislate contrary to both international law and the United Kingdom's long-held constitutional tradition of the rule of law.

- It legislates a legal fiction, reversing the Supreme Court's factual assessment of the risk of harm in Rwanda, without properly addressing the Court's concerns about the Rwandan asylum system and ousting our domestic courts' jurisdiction to consider the issue; it is an abuse of Parliament's role.
- It domestically disapplies treaties which the UK remains bound internationally, showing bad faith, setting poor precedent, and damaging the UK's credibility as an international partner.
- It will result in violation of the European Convention on Human Rights ('ECHR'), when commitment to the ECHR is a part of crucial international agreements, including the Good Friday Agreement and the UK - EU Trade and Cooperation Agreement, as well as the UK's treaty arrangements with the EU.
- It is an attack on judicial scrutiny, undermining our constitutional separation of powers.
- It threatens the UK's role as a global leader in championing the rule of law, democracy and human rights.

Breaches of International Law

1. Reputations are hard won but easily lost. The United Kingdom's international reputation is based on its commitment to a rules-based international order, that we comply with the agreements to which we sign up to as a country, and the constitutional principle of the rule of law. This Bill, and the Treaty with Rwanda which underlies it, by likely breaching many of the UK's obligations under international law, sends a devastating signal to the world about our reliability as an international partner and opens up the UK Government to claims of hypocrisy whenever it tries to encourage other countries to comply with international law and human rights standards.

2. Compliance with international law has been a central part of the foreign policy of the United Kingdom for decades. This is a perilous moment for international law and human rights obligations, given the conflicts in continental Europe and across the world. Now is the moment for the UK to lead on the world stage, upholding basic norms of international law and human rights contained in instruments such as the Refugee Convention and ECHR, not the moment for it to retreat.

3. We would highlight the following quotations from leading members of the UK Government on the importance of full compliance and promotion of international law:

'That is important because ***the UK is a country that demonstrates to the whole world the importance of international law. We champion that on the world stage and it is important that we demonstrate it****.'* (emphasis added)

James Cleverly MP, Home Secretary, Safety of Rwanda (Asylum and Immigration) Bill Second Reading debate, 12 December 2023

'While there is a conceptual debate about whether the rule of law includes compliance with international law – and my own view in that debate aligns with Lord Bingham – ***it is certainly clear that the UK must comply with its international obligations and an important part of my role is to ensure that we do so'.*** (emphasis added)

Victoria Prentis MP, Attorney General, Institute for Government speech, 10 July 2023

4. It is ironic that one of the central factors that the UK Government stresses has changed since the Supreme Court's decision is that the new Rwanda Treaty is *'binding in international law'.* However, the Government is not committed to its other international legal obligations in relation to this policy: the Bill specifically ousts our courts and tribunals *notwithstanding* any *'interpretation of international law by the court or tribunal'*; it is accompanied by a statement that the Minister cannot say it complies with rights under the ECHR; and it has also led to a situation where the Prime Minister claims he wanted to go further in breach of international law but was held back by the Rwandan Government.

5. This Bill, building on the Illegal Migration Act 2023, *prima facie* places the UK at risk of breaching its international legal obligations under a raft of multilateral treaties, including the ECHR; the 1951 Refugee Convention, and its 1967 Protocol; the 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ('UNCAT'); the 1966 UN International Covenant on Civil and Political Rights ('ICCPR'); the 1954 UN Convention relating to the Status of Stateless Persons; the 1961 UN Convention on the Reduction of Statelessness; the 1989 UN Convention on the Rights of the Child; and the 2005 European Convention on Action against Trafficking.

6. In a unanimous decision of five Justices, including its President, the UK's Supreme Court found that individuals sent to Rwanda would face a real risk of ill-treatment. No legislative sleight of hand can change this. It noted how the principle of *non-refoulement* (i.e. to not directly or indirectly send individuals to a country where there is a real risk of ill-treatment) was *'enshrined in several international treaties which the United Kingdom has ratified',* including the Refugee Convention, UNCAT, ICCPR, and ECHR, and is given effect in numerous domestic statutes. Further, there is significant consensus that it forms part of customary international law and has arguably reached the status of a peremptory norm, as it is a norm from which no derogation is permitted.[1]

7. Clause 1(4) of the Bill states *'(a) the Parliament of the United Kingdom is sovereign, and (b) the validity of an Act is unaffected by international law'.* However, Parliament's sovereign acts may, of course, be in breach of international law. Article 27 of the 1969 Vienna Convention on the Law of Treaties is clear: *'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty*'.

8. Whilst preventing domestic courts from revisiting their findings on Rwanda being a safe country, the legislation does not prevent:

[1] Cathryn Costello and Michelle Foster, 'Non-refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test' (2016) in Heijer, M., van der Wilt, H. (eds) *Netherlands Yearbook of International Law* (T.M.C. Asser Press 2015) vol 46.

- our courts finding this piece of legislation to be incompatible with rights under the ECHR and issue a declaration pursuant to section 4 Human Rights Act ('HRA'); or
- applications to and final binding decisions from the European Court of Human Rights ('ECtHR').

9. Given the Supreme Court's unanimous findings, and the inadequacies of the Treaty to address those issues (see below), it is extremely likely that the ECtHR will agree with the decision of the Supreme Court and maintain that the policy is a breach of the ECHR. This Bill will place the Government on a direct collision course with domestic courts, the ECtHR, the Council of Europe, and other international bodies. The UK will continue to be responsible for these breaches on the world stage.

10. Legislating in such a reckless manner in relation to our obligations under the ECHR risks damaging the UK's reputation as a country that led within the Council of Europe. Compliance with the ECHR is also critical to the Good Friday Agreement,[2] the UK-EU Trade and Cooperation Agreement,[3] and the Windsor Framework,[4] as JUSTICE has highlighted previously.

The Fact is Rwanda is Not Safe

11. Parliament should entirely reject the attempts by the Executive to legislate the legal fiction that Rwanda is safe. It should reject the judgement of the Executive, masquerading as the judgement of Parliament, set out in Clause 1(2)(b):

    'this Act gives effect to the judgement of Parliament that the Republic of Rwanda is a safe country.'

12. The judgement of whether Rwanda is safe is a judgement that should remain properly made by judges overseeing the actions and decisions of the Executive.

13. This Bill will cause a constitutional crisis, interfering with our separation of powers by seeking to overturn the evidence-based findings of fact, made not only by a court of competent jurisdiction, but in fact by the highest court in the United Kingdom, the Supreme Court. The Treaty does not change those findings of fact; the Supreme Court was clear that *'there is a real risk that the practices described above will not change, at least in the short term'* (§93).

14. Clause 2(1) of the Bill goes further: *'Every decision-maker must conclusively treat the Republic of Rwanda as a safe country'.* This places a statutory obligation on the Home Secretary, immigration officers, courts, and tribunals to conclusively depart from the fact-finding of our Supreme Court. Once this mandatory duty is commenced, there is no internal provision in the Bill to suspend or bring an end to this duty if the UK Government finally comes to accept that Rwanda is *not* a safe country.

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[2] The UK affirmed 'mutual respect, the civil rights and the religious liberties of rights of everyone in the community', and agreed that 'the British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention. See the Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland (April 1998, Cm 3883) 16, para 2.

[3] It threatens the withdrawal arrangements with the European Union, including in trade and law enforcement, as the UK-EU Trade and Cooperation Agreement allows the EU to suspend or terminate the agreement as a whole if there is a 'serious and substantial failure' by the UK to respect human rights and the international human rights treaties to which both are parties'. See Articles 763(1), 771, 772.

[4] Article 2 ensures no diminution of rights. See the Protocol on Ireland/Northern Ireland to the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

15. A safe country is specifically defined in Clause 1(5) as a country *'to which persons may be removed from the United Kingdom in compliance with all of the United Kingdom's obligations under international law that are relevant to the treatment in that country of persons who are removed there'*, including a country *'in which any person who is seeking asylum or who has had an asylum determination will both have their claim determined and be treated in accordance with that country's obligations under international law'.*

16. However, our Court of Appeal and Supreme Court, relying on the particularly important evidence of the UN High Commissioner for Refugees (UNHCR), identified serious deficiencies in the Rwandan asylum and legal system, which require long-term sustainable solutions – that ought to be developed by Rwanda for Rwanda, not superimposed by the United Kingdom for the circumvention of its international legal obligations and global responsibility sharing.

17. If Rwanda was truly safe:

    - **the Bill would not need to exclude Rwandan nationals from its scope**—their exclusion in Clause 7(2) makes clear that the incredibly high threshold for individual assessment in Clause 4(1) of the Bill '*based on compelling evidence relating specifically to the person's particular individual circumstances'* is insufficient to protect them from *refoulement*. Since 2020, the Home Office's own statistics show the UK has granted protection to 15 Rwandan nationals, including six individuals since it first entered into its partnership with Rwanda in April 2022.

    - **the Minister would have been able to make a statement under section 19 HRA** that, in his view, the provisions of the Bill are compatible with Convention rights—he was not able to do so.

18. Neither signing the Treaty, which merely contains assurances that the Supreme Court found Rwanda could not fulfill, nor stating in a Bill that Rwanda is safe, changes the facts on the ground. The Bill and the Treaty do not:

    - **Ensure Rwanda will comply with these new bilateral treaty obligations, when it has failed to comply with multilateral treaty obligations in the past**. Article 10(3) of the Treaty seeks to ensure that individuals will only be returned to the UK. However, Rwanda already had international legal obligations not to *refoule* individuals, with which it could not comply under Article 3(1) UNCAT, the ICCPR, as interpreted by the United Nations Human Rights Committee, and Article 33(1) Refugee Convention. Furthermore, Article 10(3) provides only the vague non-assurance that: *'The Parties shall cooperate to agree an effective system for ensuring that removal contrary to this obligation does not occur'.* Neither the UK nor the Rwandan Government have published details of any agreed effective system to prevent *refoulement*.

    - **Engender a culture of sufficient appreciation or understanding of obligations under the Refugee Convention**, when these have not developed in the years that Rwanda has hosted refugees. For example, between 2020 and 2022, UNHCR found that Afghan, Syrian and Yemeni asylum claims had a 100% rejection rate in Rwanda (Supreme Court decision, §85). Article 3(1) of the Treaty requires '*that the obligations in this Agreement shall be met in respect of all Relocated Individuals, regardless of their nationality, and without discrimination.'* However, Rwanda already had legal obligations not to discriminate, including under the International Convention on the Elimination of All Forms of Racial Discrimination,[5] Article 26 ICCPR, Article 3

[5] Policy Statement, §34.

Refugee Convention, and Article 16 of its own Constitution,[6] with which it failed to abide in these cases.

- **Erase Rwanda's poor human rights record or the profound human rights concerns that remain, including that refugees have been ill-treated** when they have *'expressed criticism of the government. The most serious incident occurred in 2018, when the Rwandan police fired live ammunition at refugees protesting over cuts to food rations, killing at least 12 people'* (Supreme Court decision, §76). The Policy Statement does not assert that refugees who may be critical of the Rwandan government would be generally safe in Rwanda. In fact, it admits that it is still working with Rwanda to address *'concerns around the limited space for political opposition and critical voices'* and that *'UK Government ministers and officials have regularly raised these issues, emphasising the need for a more open political space'* (Policy Statement, §45). This would suggest that the Supreme Court's concerns regarding the Rwandan government's suppression of political dissent and criticism remain unresolved.

- **Secure any legal remedy or injunctive process under the UK's or Rwanda's legal system if an individual is removed to Rwanda, and Rwanda *in fact* tries to *refoule* them**, but it bars our courts and tribunals from even contemplating this possibility. Furthermore, as the Joint Committee on Human Rights states at §13 of their December 2023 Chair's Briefing Paper:

  > *'Clause 4 [of the Bill] would not, however, be of assistance to an individual who is removed to Rwanda but who subsequently becomes at risk due to a change of circumstances in the laws of Rwanda or the factual situation on the ground after their removal. Even if Rwanda breached its own international legal obligations and the international human rights standards required by its treaty with the UK, it would seem that that individual would have no route to retrospectively challenge or undo their removal via UK courts.'*

- **Secure the independence of the Rwandan judiciary**. Regardless of whether or not foreign judges and independent experts are sent to assist a to-be-established "Appeal Body", the Supreme Court's concern stands: *'The system is therefore untested, and there is no evidence as to how the right of appeal would work in practice'* (§82).

- **Ensure *in practice*, that *'legal support'* in an asylum claim is *independent* if a matter becomes political, or that *effective* legal representation will be available at each stage of the process**. It was the view of the FCDO that the legal profession may not operate independently if the matter became political (Supreme Court decision, §83) and the view of the Rwandan government and the Supreme Court that the *'introduction of such a significant change of practice is liable to raise a number of issues, for example as to the role of the claimant's lawyer at each stage of the process, which may require time to resolve'* (§84). The Treaty provides that each relocated individual shall be permitted to *'seek'* free legal advice or other counsel at all stages of the asylum application process: one may *'seek'* free legal advice, but fail to find it. It is entirely unclear what *'reasonable steps'* will be taken by Rwanda to ensure sufficient capacity of lawyers, when the Policy Statement updated on 18 January 2024 makes clear that the Rwanda Bar Association has only *'38 lawyers who provide legal assistance on matters relating to the asylum process and migration law'* (§86).

[6] Policy Statement, §36: '*The Constitution of Rwanda prohibits at Article 16 discrimination of any kind based on, amongst other things, ethnic origin, family or ancestry, clan, skin colour or race, sex, region, economic categories, religion or faith, opinion, fortune, cultural differences, language, economic status, physical or mental disability*.'

- **Do away with history, or render irrelevant the failures of the Rwandan government under its recent international agreement with Israel.** In *Sagitta v Ministry of Interior Administrative Appeal* 8101/15, the Israeli Supreme Court at §87 held the agreement included *'an explicit undertaking of [Rwanda] according to which the deportees will enjoy human rights and freedoms and that the principle of non-refoulement shall be complied with'* (Supreme Court decision, §95). As the Supreme Court has said, there was *'no dispute that persons who were relocated under the agreement suffered serious breaches of their rights under the Refugee Convention*' (Supreme Court decision, §96).

- **Undermine the insufficiency of monitoring arrangements as an effective remedy to urgently prevent ill-treatment**, particularly when the recommendations of the Monitoring and Joint Committee are non-binding and certain complaints under the Treaty must be made to a representative of the Government of Rwanda.[7] As the Supreme Court expressed: *'Such arrangements may be capable of detecting failures in the asylum system, and over time may result in the introduction of improvements, but that will come too late [...]. Furthermore, the suppression of criticism of the government by lawyers and others is liable to discourage the reporting of problems, and so undermine the effectiveness of monitoring. It is also unclear whether the monitoring arrangements could provide a solution to problems emanating from the Rwandan government's interpretation of its obligations under the Refugee Convention, or from a lack of independence in the legal system in politically sensitive cases'* (§93).

19. The Government's own recently published updated evidence raises serious concerns with the human rights situation in Rwanda, its asylum process, and the independence of its legal system. For example, the Government cites the following in its recently published Country Information Notes ('CINs'):
    - It cites the 2023 Freedom House Report which gave Rwanda a 0/4 score on the independence of the judiciary and 1/4 score on whether due process prevails in civil and criminal matters (CIN Human Rights, para 8.3.4), and states that *'despite constitutional provisions that declare its independence, the Rwandan judiciary lacks autonomy from the executive in practice'* and *'judges rarely rule against the government, especially in politically sensitive cases'.*

    - The Center for Rule of Law Rwanda (CERULAR) found that *'access to justice challenges in Rwanda include but [are] not limited to; limited access to legal aid services especially legal representation in criminal, civil and administrative matters; low level of enforcement of court decisions; arbitrary application of the law…'.* (CIN Human Rights, para 8.4.2)

    - The US State Department Human Rights Report found the *'expense and scarcity of lawyers limited access to legal representation. Some lawyers were reluctant to work on politically sensitive cases, fearing harassment and threats by government officials, including monitoring of their communications.'* (CIN Human Rights, para 8.4.5)

    - UNHCR's evidence in the Supreme Court case was that the asylum procedure *'lacks transparency, breaches confidentiality and violates procedural… fairness which continues to give rise to a serious risk of refoulement'* (CIN Asylum, para 6.4.6)

    - The Home Office were told in a meeting with UNHCR on 21 March 2022 that *'UNHCR has noticed that LGBT asylum seekers have not been able to register their claims. They have to*

[7] §15 of Part 3 of Annex A and §8 of Part 3 of Annex B to the Treaty.

report to the local authorities and are told by the most junior immigration staff that Rwanda is not the place for them, or Rwanda does not deal with such issues. They are given immediate verbal rejection…' (CIN Asylum, para 6.4.13)

20. Therefore, without calling into question the good faith and intentions of Rwanda, in the words of our Supreme Court, *'intentions and aspirations do not necessarily correspond to reality: the question is whether they are achievable in practice*', particularly, *'in the light of the present deficiencies of the Rwandan asylum system, the past and continuing practice of refoulement (including in the context of an analogous arrangement with Israel), and the scale of the changes in procedure, understanding and culture which are required'* (§102). There is no prospect of the concerns of the Supreme Court being fully addressed in the short-term and there remains a real risk of *refoulement*.

Attack on Judicial Scrutiny

21. Independent judicial scrutiny is at the cornerstone of the UK's constitution and its long commitment to the rule of law. The most orthodox statement of the nature of Parliamentary sovereignty and legislative supremacy, A.V. Dicey's *Introduction to the Study of the Law of the Constitution*, states:

    > 'We mean…when we speak of the "rule of law" as a characteristic of our country, not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.' (8th edition, 1915, Chapter IV, p. 114).

22. A modern restatement of that principle of the rule of law can be found in John Laws' (Lord Justice Laws when he was in the Court of Appeal) *The Constitutional Balance*:

    > '…judges must ensure, and have the power to ensure, that State action falls within the terms of the relevant published law.' (2021, p. 16)

23. On 15 November 2023, the Home Secretary stated that the *'government of course fully respects the Supreme Court'*. If the Government truly respected judicial competence, and if Ministers were so confident that they had addressed the Supreme Court's concerns to the extent that the policy was now compatible with international law, it would not be seeking to limit independent judicial scrutiny and oversight by our domestic courts.

24. There are four ways that this Bill attacks judicial scrutiny.

25. **First**, significantly narrowing the ambit of a serious harm suspensive claim under the Illegal Migration Act 2023, it strikes out the ability of our domestic judges to consider any appeal or review, to the extent it is brought on the grounds that Rwanda is not a safe country, including any claim or complaint that:
    - Rwanda will or may remove or send a person to another State, contravening its international obligations, including under the Refugee Convention;
    - a person will not receive fair and proper consideration of an asylum, or other "similar", claim in Rwanda;
    - Rwanda will not act in accordance with the Treaty (see Clauses 2(3)-(4) and 4(2)).

26. **Second**, the jurisdiction of our courts and tribunals is limited, through broad "notwithstanding" provisions in Clause 2(5) that override rules of domestic law, the common law, the HRA, and *'any*

interpretation of international law by the court or tribunal'. The Government is, through Clause 3, undermining the universality of human rights by seeking to:

- disapply section 2 HRA, to insulate itself from interpretation of Convention Rights in decisions regarding whether Rwanda is a safe country for a person to be removed under immigration law;
- disapply section 3 HRA, to insulate itself from our courts or tribunals reading and giving effect to the Bill in a way which is compatible with the Convention rights;
- disapply sections 6 to 9 HRA, to immunise unlawful breaches of human rights; and inhibit domestic proceedings being brought by victims and judicial remedies being granted, in decisions taken on the basis of Rwanda's safety, grants of interim remedies, or severely limit decisions regarding an individual's particular circumstances.

27. **Third**, Clause 5 gives Ministers the power to ignore Rule 39 interim measures indicated by the European Court of Human Rights ('ECtHR'), themselves binding under international law,[8] and blocks domestic courts and tribunals from having regard to them. The Home Office Permanent Secretary has recently written to the Cabinet Secretary confirming that guidance to civil servants will be amended to end the automatic deferral of removal on receipt of a Rule 39 interim measure and require ministerial approval. Such powers and guidance changes are only required on the basis that the Government is intending to breach the UK's international legal obligation to comply with Rule 39 interim measures. This was confirmed by the Minister for Illegal Migration in the House of Commons Committee stage debate when he stated *'we would not have inserted clause 5 if we were not prepared to use it… we can and will lawfully use that power if the circumstances arise'.*

28. To be clear, interim measures can only be issued in '*exceptional circumstances, in cases where there is an imminent risk of irreparable harm',* such as when there is a risk of torture or ill-treatment. Parties, including the UK Government, can request the ECtHR to reconsider its decision or lodge a fresh request if circumstances change. However, the President of the ECtHR has confirmed that the signatory states to the ECHR have a 'clear legal obligation' to comply with interim measures.

29. On 13 November 2023, the ECtHR announced that it had decided to reform the Rule 39 procedure including to disclose the identity of judges who make decisions on interim measure requests, issue formal judicial decisions to parties, and maintain adjourning the examination of requests and requesting submission of information where the situation is not extremely urgent. As the Law Society President, Nick Emmerson, said, *'These steps will ensure that the procedure for issuing interim measures is transparent and fair to all parties involved*.' The Government can, therefore, have no valid reason for barring our courts and tribunals from consideration of such measures.

30. **Fourth**, in Clause 4(4) the Government restricts the test for our courts and tribunals granting any interim remedy delaying or preventing removal to Rwanda: to require '*that the person would, before the review or appeal is determined, face a real, imminent and foreseeable risk of serious and irreversible harm if removed*'. Furthermore, the remedy is only available to a narrow category of individuals who are not to be removed under the Government's flagship Illegal Migration Act 2023. For the thousands the Home Secretary would be under a *duty* to make arrangements to remove, under its new Illegal Migration Act 2023, the Government seeks to uphold the not-yet commenced complete prohibition on courts and tribunals granting such interim remedies.[9] It is well established in jurisprudence of the ECtHR, that given the importance attached to Articles 2 and 3 ECHR, and the

[8] The UK has an obligation under Article 34 ECHR responsibility not to hinder the effective exercise of individual application to the Court and an obligation under Article 1 ECHR to protect the rights and freedoms set forth in the ECHR, see *Mamatkulov and Askarov v Turkey* (2005) 41 EHRR 494 at [128].

[9] Clause 4(6), referencing section 54 of the Illegal Migration Act 2023.

irreversible nature of the harm that might occur if the risk of death, torture, or ill-treatment materialises, Article 13 ECHR requires access to a domestic remedy with automatic suspensive effect.[10] The Bill fails to provide such a remedy.

31. By restricting our courts and tribunals from granting interim remedies, the Government seeks to say *not only* do we want Parliament to enact provisions to give effect to our policy, *we also* want to remove the check and balance of judges supervising the lawfulness of our conduct when we operate that policy. It is the latter ambition that offends the principle of the rule of law. There is no warrant for the Home Secretary to escape being subject to the possibility of interim injunctions to restrain his unlawful conduct. It is a fundamental aspect of the rule of law that such judge-granted remedies are available to all and against all. There is no theory of our constitutional law in which they can be withdrawn from a class of persons or from a broad area of policy.

Practical Concerns

32. The UK should carry out its multilateral international legal obligations in good faith, rather than concocting and implementing ineffective, unworkable plans, such as this, which leave individuals in limbo and bar them from inclusion and integration in our society. Rather than signing treaties, and seeking to pass legislation that increasingly infringe upon the rule of law, the Home Office should instead:
    - reallocate its time and resources to fairly and efficiently determining protections claims, recognising individuals who are refugees to be refugees and providing them with the rights to which they are entitled as refugees under the 1951 Refugee Convention and its 1967 Protocol;[11]
    - undertake its positive obligations to protect victims of modern slavery and trafficking and to prevent their exploitation rather than forcibly removing them to Rwanda,[12] a country which according to the US Department of State *2023 Trafficking in Persons Report: Rwanda*, *'does not fully meet the minimum standards for the elimination of trafficking*'; and
    - in line with the Committee on the Rights of the Child's recommendation, 'ensure that children and age-disputed children are not removed to a third country'.[13]

33. This is an eye-wateringly expensive plan to avoid the UK's role in global responsibility sharing. Home Office Permanent Secretary Matthew Rycroft confirmed the ballooning costs of the Rwanda plan: £240 million paid thus far, and a further £150 million over the next three years, in addition to the estimated costs of £169,000 per person removed.

34. Third-country inadmissibility policies and legislation, offloading our international responsibilities, not merely for offshore processing but on a permanent basis, do not pose a deterrent effect, as the Home Office's own statistics reveal. All small boat arrivals have risen, except for Albanian nationals, who remain the largest cohort of foreign nationals referred to the National Referral Mechanism as potential

[10] De Souza Ribeiro v France (App. No. 22689/07) European Court of Human Rights Grand Chamber, 13 December 2012; A.M. v The Netherlands (App. No. 29094/09) European Court of Human Rights Third Section, 5 July 2016.
[11] As a matter of law a person is a refugee as soon as they meet the definition set out at Article 1A(2) of the Refugee Convention.
[12] See, for example, Rwanda Treaty, Article 13(2) and Illegal Migration Act 2023, s 5(1)(c). This scheme, together with provisions in the Illegal Migration Act 2023, will deprive victims of their rights to recovery, expose them to re-exploitation, and facilitate the work of traffickers who will use this scheme to trap individuals in exploitation or cause further exploitation.
[13] Committee on the Rights of the Child, 'Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland' (CRC/C/GBR/CO/6-7, 22 June 2023) §54.

victims of modern slavery, as demonstrated in the Home Office's most recent quarterly statistics, and for whom traffickers may have simply varied their approach:

'Small boat arrivals from July to September 2023 were 34% lower than in the same 3 months of 2022. This decrease is largely due to a reduction in Albanians arriving in the year ending September 2023 (further detail in Section 3.3 below). The number of small boat arrivals from other nationalities increased 9% over the year as a whole (from 32,466 arrivals in the year ending September 2022 to 35,508 arrivals in year ending September 2023).'

35. Inadmissibility policies such as the one underpinning this Bill are ineffective and only place undue strain on the asylum system, by creating a large backlog of asylum claims. Nearly 70,000 individuals claiming asylum have been considered for inadmissibility, with more than 30,000 issued notices of intent. Only 83 inadmissibility decisions were served, and 23 returns taking place only to EU countries and Switzerland. After this unnecessary waste of caseworker time, 43,000 individuals then had their claims admitted for consideration. This leaves 26,669 individuals still held in limbo, in a costly asylum backlog, barred from recognition and corresponding rights as a refugee.[14] This number is only likely to increase over the coming years, as the Government has created a mandatory statutory obligation, in section 5 of the Illegal Migration Act 2023, that will result in thousands of undecided protection and human rights claims in the UK.

Importance of Parliamentary Scrutiny

36. This Bill is not accompanied by a statement of compatibility with Convention rights, under section 19 HRA. Lord Irvine, then Lord Chancellor, stated in Committee stage on 3 November 1997, about a statement of compatibility under section 19, when the HRA was still a Bill in the House of Lords:

'Where such a statement cannot be made, parliamentary scrutiny of the Bill would be intense.'

37. The recent report by the cross-party House of Lords International Agreements Committee made clear that, whilst the Treaty was an improvement on the Memorandum of Understanding, *'it is also clear from the Government's own evidence that significant aspects of the Rwanda Treaty require further implementation before any assessment can be made of their effectiveness'.* The Committee concluded that ten *'significant legal and practical steps have to be taken before the assurances provided in the Rwanda Treaty can be fully implemented'*:
    (a) a new asylum law in Rwanda;
    (b) a system for ensuring that non-refoulement does not take place;
    (c) a process for submitting individual complaints to the Monitoring Committee;
    (d) the recruitment of a Monitoring Committee support team;
    (e) the appointment of independent experts to advise the asylum First Instance and Appeals Bodies;
    (f) the appointment of co-presidents of the Appeals Body;
    (g) the appointment of international judges;
    (h) training for international judges in Rwandan law and practice;
    (i) training for Rwandan officials dealing with asylum applicants; and
    (j) steps to ensure a sufficient number of trained legal advisers and interpreters are available.

[14] These rights include the right to engage in wage-earning employment and self-employment, and to practice a profession; access to public funds on the same terms as British citizens; the right to rent and access to housing; access to courts on equal terms to British citizens; freedom of movement and access to a travel document; and family reunion. Refugee Convention, Articles 13, 16, 17, 18, 19, 21, 23 and 28.

38. The House of Lords agreed with the Committee's recommendation that the Treaty not be ratified until the protections in the Treaty have been *'fully implemented'*. Crucially, if the UK ratifies the Treaty, under Article 24 of the Treaty, the Government of Rwanda has control over when the Treaty enters into force and thus when the Safety of Rwanda Bill comes into force (under Clause 9(1)).

39. It is worth emphasising that the Government's position, if this Bill is passed through Parliament as it stands, is that deportation flights to Rwanda will commence '*in the spring*'. There is very limited prospect that the Treaty will have been fully implemented, and the risk of ill-treatment eliminated, by that point. The International Agreements Committee report noted the Government had provided *'no indication of the timeframe for the completion of these steps, but plainly it will take some time'* (§20) and that *'the Treaty is unlikely to change the position in Rwanda in the short to medium term'* (§45).

40. **We, therefore, urge Parliamentarians to take every opportunity to oppose and intensely scrutinise this deeply controversial piece of proposed legislation**: it is an affront to our Constitution's principles of the rule of law and the separation of powers; it seeks to usurp the Supreme Court's powers in ensuring compliance with human rights; it seeks to implicate Parliament in the Government's fiction that Rwanda is safe which is an abuse of Parliament's role; and it drags the UK into disrepute internationally.